

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM )  
MOTORS, INC., and MATTINGLY AUTO )  
SALES, INC., individually and on behalf of )  
other members of the general public similarly )  
situated, )

Plaintiffs, )

v. )

COX ENTERPRISES, INC., COX )  
AUTOMOTIVE, INC., NEXTGEAR )  
CAPITAL, INC. F/K/A DEALER SERVICES )  
CORPORATION, successor by merger with )  
Manheim Automotive Financial Services, Inc., )  
and JOHN WICK, )

Defendants. )

Case No. 1:14-cv-01589-TWP-DKL

**MOTION TO EXCLUDE EXPERT TESTIMONY OF DAVID P. HOFFMAN**

Plaintiffs, Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc., Individually, and on behalf of other members of the general public similarly situated (collectively, “Plaintiffs”), respectfully request that the Court exclude the testimony of Defendants’ proposed expert, David P. Hoffman, pertaining to amounts allegedly owed by Plaintiffs to NextGear Capital, Inc. (“NextGear”).

Mr. Hoffman’s expert report dated February 10, 2017, includes calculations of “amounts currently due by the Plaintiffs pursuant to the applicable judgment(s) or floorplan agreements involving each through the date of the expected trial in this matter.” *See* Hoffman Report, attached as **Exhibit A** hereto, at p. 5; *see also id.* at pp. 12-13. Mr. Hoffman provides these calculations “[t]o the extent they are relevant to a counterclaim, a setoff defense, or otherwise[.]” *See id.* Importantly, however, Defendants have not yet filed any answer, counterclaim, or defenses to the

Verified Amended Complaint. Accordingly, the relevance of any proposed expert testimony pertaining to a possible future counterclaim or setoff defense must be determined once those pleadings are filed. As an example, Mr. Hoffman opines that Red Barn has an outstanding obligation to NextGear in the amount of \$184,330. *See* Exhibit A at p. 12. However, the amount owed to NextGear by Red Barn was established by Red Barn's Plan of Reorganization in its bankruptcy, which was confirmed on January 6, 2014, and is a final non-appealable judgment. *See* Order Confirming Debtor's Amended Plan of Reorganization, Case No. 13-10548, U.S. Bankr. Ct., M.D. La., R. Doc. 91, attached hereto as **Exhibit B**. NextGear is a Class 5 Creditor as defined in the Plan, did not participate in that bankruptcy in any way and cannot now claim in this proceeding that it is owed any amount other than that contained in the Red Barn Plan.

Further, Plaintiffs reserve all rights to challenge Mr. Hoffman's testimony later in these proceedings, after Defendants have filed their answer, defenses, and any counterclaims.

WHEREFORE, for the reasons stated above, Plaintiffs respectfully request that the Court exclude any expert testimony of Mr. Hoffman relating to amounts owed by Plaintiffs to NextGear.

Respectfully submitted,

/s/ Kerry A. Murphy

Gladstone N. Jones (La. Bar #22221) (*pro hac vice*)

Lynn E. Swanson (La. Bar #22650) (*pro hac vice*)

Catherine E. Lasky (La. Bar #28652) (*pro hac vice*)

Kerry A. Murphy (La. Bar #31382) (*pro hac vice*)

**JONES, SWANSON, HUDDALL & GARRISON, L.L.C.**

601 Poydras Street, Suite 2655

New Orleans, Louisiana 70130

Telephone: (504) 523-2500

Facsimile: (504) 523-2508

James M. Garner (La. Bar #19589) (*pro hac vice*)

Ryan D. Adams (La. Bar #27931) (*pro hac vice*)

Matthew M. Coman (#23613) (*pro hac vice*)

**SHER GARNER CAHILL RICHTER KLEIN & HILBERT, L.L.C.**

909 Poydras Street, Suite 2800  
New Orleans, Louisiana 70112  
Telephone: (504) 299-2100  
Facsimile: (504) 299-2300

Cassie E. Felder (La. Bar #27805) (*pro hac vice*)  
**LUGENBUHL, WHEATON, PECK, RANKIN &  
HUBBARD**  
9311 Bluebonnet Blvd., Suite A  
Baton Rouge, Louisiana 70810  
Telephone: (225) 291-1990  
Facsimile: (504) 3109195

and

Kathleen A. DeLaney (#18604-49)  
**DeLaney & Delaney LLC**  
3646 North Washington Blvd.  
Indianapolis, IN 46205  
Telephone: (317) 920-0400  
Facsimile: (317) 0404

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I do hereby certify that I have, on the 8th day of March, 2017, served a copy of the foregoing upon all counsel of record by CM/ECF filing.

/s/ Kerry A. Murphy  
Kerry A. Murphy